

Docket No.: PW-1CPA
Serial No.: 09/430,906REMARKS

Upon entry of the foregoing amendments, claims 1, 4, 5, 9, 10, 13-16, 20-24, and 33 will be before the Examiner for consideration.

With respect to the rejections under 35 USC § 112, the foregoing amendments render such rejections moot. Reconsideration is requested.

Claims 1, 4-16, 21, 22, and 33 are rejected under 35 USC § 103(a) as being obvious over Brox. Applicants respectfully assert that the amendments to claim 1 obviate this rejection. Claim 1 has been amended to recite that the capsule contains 50 milliliters of an ethanol composition. This amendment clearly distinguishes the capsule from the Brox capsule. While it is true that in some instances, a mere change in size and dimension of a known product does not make the product patentable, the volume size recited in claim 1 is not a mere change in dimension. (As an aside, Applicants are not suggesting that the recreationally relevant alcohol capsules of the subject invention are taught by Brox, irrespective of size.) The 50 ml amount defined in the claims directly correlates with a fill amount which is capable of passing the "Standards of Fill" for wine and distilled spirits as set forth in 27 CFR § 4.37 (b)(1) and 27 CFR § 4.37 (a)(1). This is the essence of what Applicants refer to when they describe "recreationally relevant" amounts of alcohol: a purchasable and transportable container of alcohol whose consumption is designed to achieve a recreational euphoria. Unlike Brox, this is not a small volume of a buffered alcohol used as a carrier for a pharmaceutical agent. The capsule of claim 1 is container of distilled spirits or wine strictly governed by the rules of the Alcohol and Tobacco Tax and Trade Bureau (TTB). The amount recited in the claim is not a mere changing of "dimension." It is a container size wherein any size smaller is illegal to sell under U.S. law.

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This is a significant, meaningful and patentable distinction over Brox and the other cited references. Brox does not teach or suggest the elements of claim 1. Claims dependent on claim 1 are construed to contain all of the limitations of claim 1. Applicants respectfully request the withdrawal and reconsideration of this rejection.

Claims 1, 4-16, 21, 22, and 33 are rejected under 35 USC § 103(a) as being obvious over Sanker. Applicants incorporate the arguments made above and in the response filed on March 17, 2003. For the reasons set forth above regarding the Brox reference, and the reasons provided in Applicants' previous response, Applicants assert that this rejection is obviated by the amendments to claim 1 above. Sanker does not teach or suggest the elements of claim 1 as required for obviousness. Applicants respectfully request reconsideration of this rejection.

Lastly, claims 23 and 24 are rejected as obvious over Sanker in view of McMahon. Applicants reiterate the remarks made above in response to the rejections based on Brox and Sanker. Claims 23 and 24 ultimately depend on claim 1, and are thus construed to contain the limitations of claim 1. Nowhere does McMahon teach or suggest a capsule that can pass the standards of fill as set forth by the TTB. Indeed, McMahon does not remotely involve such a capsule. Reconsideration of this rejection is requested.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Timothy H. Van Dyke, Applicants' Attorney at 407-926-7726 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

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Respectfully Submitted,

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